

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DAVID B. WATSON, SR.,)	
)	
Plaintiff)	
)	
v.)	Civil No. 97-0044-B
)	
FRANCIS MARSANO, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

Plaintiff has filed a Complaint pursuant to 42 U.S.C. § 1983.¹ Defendants Perry O'Brian, Esq. and the State Defendants (excluding the Maine Superior Court, which has yet to respond to the Complaint) filed separate Motions to Dismiss Plaintiff's Complaint regarding which the Court has issued a Recommended Decision. The Defendants not addressed in the Court's Recommended Decision are the Bangor Police Department and the Maine Superior Court.

Because Plaintiff is a prisoner, the Court is required to dismiss Plaintiff's Complaint if it is frivolous or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b)(1). As to both remaining Defendants, the Court concludes that the Complaint is properly dismissed under this provision.

First, the "Maine Superior Court," as a State entity, is simply not a person within the meaning of 42 U.S.C. section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (finding

¹ To the extent Plaintiff seeks to challenge the *fact* of his conviction, he should file a Petition for Writ of Habeas Corpus by a person in state custody in accordance with the form provided in the Federal Rules of Civil Procedure.

the same for the State Police). Second, Plaintiff has failed to state a claim against the Bangor Police Department.²

As a preliminary matter, the Court is disinclined to dismiss the "Bangor Police Department" on the grounds that it is not an entity subject to suit, as Defendant suggests in its pleadings. Rather, in light of Plaintiff's pro se status, the Court views this Defendant as the City of Bangor, which would be liable under section 1983 upon "proof that the municipality maintained a policy or custom which caused, or was the moving force behind, a deprivation of constitutional rights." *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540, 544 (1st Cir. 1996) (citing *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 694 (1978)) (other citations omitted). The difficulty is that Plaintiff has made no such allegation. Instead, the "Bangor Police Department" is alleged to have "falsely charged" Plaintiff with a crime.

In addition, the City of Bangor may not be held liable solely on the basis of its status as the employer of the particular officer or officers involved. There is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). Defendants may only be held liable for their own acts or omissions. *Id.* Further, those acts or omission must be shown to have been deliberately indifferent to Plaintiff's constitutional rights. *City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989). Because Plaintiff does not name the officer or officers alleged to have been involved in the incident giving rise to this lawsuit, *see, eg., Roy v. City of Augusta*, 712

² The Court is disinclined to dismiss the "Bangor Police Department" on the grounds that it is not an entity subject to suit. Rather, in light of Plaintiff's pro se status, the Court views this Defendant as the City of Bangor, which would be liable under section 1983 upon "proof that the municipality maintained a policy or custom which caused, or was the moving force behind, a deprivation of constitutional rights." *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540, 544 (1st Cir. 1996) (citing *Monell v. Department of Social Serv.*, 436 U.S. 658, 694 (1978)) (other citations omitted).

F.2d 1517 (1st Cir. 1983), his claim regarding his arrest should be dismissed for his failure to state a claim.

Conclusion

For the foregoing reasons, I hereby recommend Plaintiff's Complaint be DISMISSED pursuant to 28 U.S.C. § 1915A(b)(1) as frivolous as it relates to Defendant Maine Superior Court, and for Plaintiff's failure to state a claim upon which relief may be granted against Defendant Bangor Police Department.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on April 29, 1997.